

30 JUN 1976

DD/A Registry

File *Lester*

MEMORANDUM FOR: Deputy Director for Administration
FROM : James H. McDonald
Director of Logistics
SUBJECT : EEO Questions
REFERENCE : Memo dtd 18 June 76 to D/L fm A-DD/A, same
subject

1. This memorandum responds to the reference and is for information only.

2. To ensure that contractors are complying with the appropriate EEO directives as they relate to Agency contracts, the following procedures have been implemented:

a. The Chief, Procurement Management Staff, Office of Logistics (PMS/OL), has been made responsible for ensuring that the Agency's procedures for contracting for supplies, equipment, and services comply with Executive Order 11246 and the directives of the Office of Federal Contract Compliance.

b. Procurement Note No. 75 entitled "Equal Employment Opportunity Under Agency Contracts" was revised and distributed to all contracting teams and the Procurement Division. This Note describes the legal basis for the EEO requirements and sets forth in detail the responsibilities of contracting officers and the procedures to be followed to ensure that contractors are complying with the EEO regulations insofar as they apply to Government contracts.

c. PMS has established channels for action and communication on EEO contract compliance matters with key personnel in the Civil Rights Division of the General Services Administration (GSA) and in the Contract Compliance Group of the Defense Supply Agency (DSA). Security approvals have been obtained for those individuals so that compliance certifications in SC-1

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(Agency association classified) contracts can be obtained in a secure manner. (GSA and DSA, particularly the latter, have been designated as the "compliance agencies" for practically all of the contractors the Agency uses.)

d. The Associate General Counsel checks for the inclusion of appropriate EEO clauses in contracts reviewed by that office and notifies PMS/OL of any potential irregularities in the EEO area.

e. Through such media as CONIF, the Contract Review Board, the Procurement Division's "Weekly Activity Report," and other reporting channels, PMS/OL monitors significant contractual activity for the purpose of ensuring that the applicable EEO certifications have been obtained and placed in the contract files.

3. To ensure that contracting officers are attuned to the objectives of the EEO directives as they apply to Government contracts, PMS/OL maintains contact on a personal basis with all contracting officers in pursuing the procedures outlined in paragraph 2, passes on through the Procurement Policy Panel updating information on developments in the EEO Federal Contract Compliance Program as it is obtained from the Office of Federal Contract Compliance, from liaison with GSA and DSA, from the news media, or from the various contract information services to which the Staff subscribes, and in general publicizes such information through appropriate internal channels.

4. As the Agency's contracting officer for real estate and construction, the Chief, Real Estate and Construction Division, OL, is responsible for ensuring that any construction contracts written in the name of the Agency contain the appropriate EEO clauses and that contractors comply with them. However, as you know, there are very few of this type of contract written.

5. Attached also is a copy of the EEO material prepared for your use last December. Although the wording of some of

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the statements in the "EEO Update" section does not apply exactly to the situation today, you may find this material to be a useful supplement to this memorandum.

[Redacted Signature]

James H. McDonald

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Atts

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Promoting EEO Through the Medium
of Agency Contracts

As you probably know, one of the major vehicles for the implementation of socio-economic legislation passed by the Congress is the Government contract. Clauses relating to this type of legislation are included routinely in each contract awarded by the Agency. There are presently 14 such clauses in the preprinted "boiler plates" which are automatically incorporated in our contracts. They cover such subjects as: Utilization of Small Business Concerns, Utilization of Labor - Surplus Area Concerns, the Buy American Act, Listing of Employment Openings for Veterans, and Convict Labor - to name a few.

The clause we are most interested in today is the one on Equal Opportunity, which cites Executive Order 11246 of 28 September 1965 and subsequent amendments. Part II of this Executive Order is entitled "Nondiscrimination in Employment by Government Contractors and Subcontractors." The Secretary of Labor is assigned responsibility for administering this Part as well as Part III, which deals with Federally assisted construction contracts.

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To assist him in effecting compliance under Part II of the Order, the Secretary of Labor, through his Office of Federal Contract Compliance (OFCC), has reassigned compliance responsibility to 17 Federal executive agencies and departments which award and administer Government contracts. These so-called "compliance agencies" have been assigned responsibility for ensuring compliance from contractors falling into the various broad industrial categories listed in the Standard Industrial Classification Code (SIC). For example, DOD is the compliance agency for any contractors concerned with Textile Mill Products, Non-Electrical Machinery, Aircraft and Parts, and so on. GSA is responsible for Lumber and Wood Products, Paper and Allied Products, to mention just two categories; and AEC is responsible for Miscellaneous Chemical Products and Chemical Products and Explosives. There are many more of these, of course.

Compliance agencies are required to review EEO programs in effect at contractors' plants. This review involves periodic on-site visits and in-depth analysis of the contractors' EEO policies and practices. A key requirement is an acceptable Affirmative Action Plan containing appropriate goals and timetables for reaching them. When deficiencies or violations are discovered, the contractor is required to correct them. Failure by a contractor to meet

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these requirements can result in a variety of sanctions ranging from a determination of nonresponsibility (making a contractor ineligible for consideration for a Government contract) to cancellation of an existing contract or even enforcement proceedings by the Department of Justice. The point is that the Order does have teeth in it.

Just recently, for example, the Defense Supply Agency (DSA) notified General Motors that two of its divisions would receive no more contracts from the Government until deficiencies in their Affirmative Action Plans (AAP) were rectified. In another case, a U. S. District Court found that a contractor seeking a Government contract was not entitled to a hearing after having been found to be non-responsible because of an unsatisfactory AAP. And there are others every day.

We are not a "compliance agency." If questions concerning compliance by any of our contractors were to arise, we would refer them to the appropriate compliance agency. Almost all of our contractors would fall under the compliance jurisdiction of DOD or GSA.

But this does not mean that we have no responsibilities in the area of Equal Opportunity; and in April 1974, a Procurement Note specifying Agency responsibilities in the contracts area was sent to each of our Contracting Officers. This Procurement

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Note requires, for one thing, that each of our contracts incorporate the EEO clauses stipulated by the Executive Order, unless they are of certain types specifically exempted by the Office of Federal Contract Compliance (OFCC). In general, contracts exempted are those with a value of \$10,000 or less, contracts for work to be done outside of the U. S. with personnel recruited outside of the U. S., contracts with state or local governments (U. S.), or contracts exempted by the Secretary of Labor for reasons in the national interest.

In addition, all solicitations or Requests for Proposals which are expected to result in a contract in excess of \$10,000 must contain representations specified by the Armed Services Procurement Regulations (which we follow in our procurement activities) concerning: Nonsegregated Facilities, Previous Contracts and Compliance Reports, an Affirmative Action Program, and Equal Employment Compliance, to which the offeror must certify that he is or is not in compliance.

In each solicitation or Request for Proposal estimated at \$1,000,000 or more, an additional statement must be included to the effect that a contract will not be awarded unless the contractor, or any first-tier subcontractor to whom it is anticipated that a subcontract of that amount

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may be awarded, has been found by an actual, recent review to be in compliance with the provisions of the EEO clauses.

Finally, before a \$1,000,000 or greater contract is actually awarded, we check to ensure that the prospective contractor's EEO program is in an "up" status; and the contract file is documented accordingly.

To give you an idea of the reach of these EEO : provisions through the Agency's contracting program: In FY 1975, approximately 1,170 contracts and Task Orders in excess of \$10,000 were awarded to approximately 450 different contractors and, of course, the EEO clauses were incorporated in the contracts themselves as well as in the Requests for Proposals.

To date, the Agency has received no EEO complaints arising from work performed under any of its contracts. If such a complaint were received, appropriate security clearances on a need-to-know basis would be established at the designated "compliance agency," and the complaint would be processed through that agency.

In summary then, we implement the provisions of the Executive Order on EEO by: (1) Including certain representations in each solicitation or Request for Proposal expected to result in a contract over \$10,000, (2) incorporating in each contract over \$10,000 the provisions of

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Section A of the boiler plate, which contains the basic EEO clause, and (3) making an EEO compliance check before any contract of \$1,000,000 or more is awarded.

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EEO UPDATE

The procedural machinery for monitoring our Federal Contract Compliance Program has been established:

1. While CIA is not a compliance agency and therefore is not required to designate a Contract Compliance Officer, I have asked the Chief of the Procurement Management Staff to ensure that our Agency is in full compliance with all requirements. Procurement Note 75 directs our Contracting Officers to refer EEO problems to C/PMS, and the entire EEO matter was discussed in detail with all of our senior Contracting Officers at a meeting last Tuesday.

2. Cleared channels for dealing with contract compliance matters have been established with DSA and will shortly be established with GSA. (I understand that you gentlemen already know two of the principals involved, that is, Messrs. Hogan of DSA and Ballard of GSA.) These arrangements will enable us to process such matters even though a contract may be classified.

3. PMS has established a Log in which will be listed for action and followup all requests for pre-award onsite surveys required for prospective contracts of \$1,000,000 or more.

4. On a quarterly basis, PMS will search CONIF for contracts of \$1,000,000 or more to ensure that our Contracting Officers are complying with the Procurement Note on that point. The list thus derived will be compared with the Log, and appropriate action will be taken if there is an indication of discrepancies.

5. PMS already periodically reviews the DOD's "Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors" and GSA's "Consolidated List of Current Administrative Debarments by Executive Agencies" to pick up the names of any Agency contractors

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who may appear on those lists for any reason. These lists include contractors which have been debarred under the provisions of the Executive Order for failure to adhere to the Contract Compliance Program. Up to the present time, the only contractors debarred for this reason have been a handful of construction contractors and a few clothing manufacturers, none of which we use.

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6. Federal Publications, Inc., will offer a comprehensive 3-day seminar on EEO on February 9 through 11 at the Sheraton National here in Arlington. A representative from my staff will be registered at that seminar.

7. Finally, as part of PMS's responsibility to survey periodically the operations of our contracting activities, individual files for contracts below the \$1,000,000 level will be spot-checked to ensure that compliance with Procurement Note No. 75 is being obtained in that area.

DDA 76-3067

18 June 1976

MEMORANDUM FOR: Director of Logistics
FROM : Michael J. Malanick
Acting Deputy Director for Administration
SUBJECT : EEO Questions

Jim:

STATINTL

1. At the recent "rap session" I had with the DCI's EEO panel [redacted], they presented me with two questions which, because of limited time, we did not get around to discuss. At some future date I am sure I will be asked those same questions so I would like to have them answered by you. The questions are:

a. What is the Director of Logistics doing to ensure that contractors are complying with the appropriate EEO directives as they relate to U.S. Government contracts?

b. What is being done to ensure that each and every contracting officer is completely attuned to the objectives of the EEO directives as they relate to U.S. Government contracts?

2. May I have a written reply at sometime in the early future?

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[redacted]
Michael J. Malanick

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Michael J. Malanick

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